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10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013 - 176*

13 **LYNDA A. HAVINS**  
**aka LYNDA ANN CEFAIL**  
14 **32036 Del Cielo Oeste, Unit 5A**  
**Bonsall, CA 92003**

**A C C U S A T I O N**

15 **Registered Nurse License No. 485688**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about November 30, 1992, the Board of Registered Nursing issued Registered  
24 Nurse License Number 485688 to Lynda A. Havins, also known as Lynda Ann Cefail  
25 (Respondent).. The Registered Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on December 31, 2012, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or  
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

9 . . . .

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

12 . . . .

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

16 . . . .

17 (b) Use any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,  
or self-administration of any of the substances described in subdivisions (a) and (b) of  
22 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
23 the conviction is conclusive evidence thereof.

24 . . . .

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
27 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
28 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

#### REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 **COSTS**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(August 30, 2011 Criminal Conviction for DUI on July 31, 2011)**

8 15. Respondent has subjected her license to disciplinary action under sections 490 and  
9 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
10 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
11 follows:

12 a. On or about August 30, 2011, in a criminal proceeding entitled *People of the*  
13 *State of California v. Lynda Ann Havins*, in San Diego County Superior Court, case number  
14 CN295046, Respondent was convicted on her plea of guilty of violating Vehicle Code section  
15 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court found  
16 true the special allegations that Respondent drove with a blood alcohol concentration (BAC) of  
17 .15 percent or more within the meaning of Vehicle Code section 23578, and that a minor under 14  
18 years of age was in the vehicle at the time of the offense, within the meaning of Vehicle Code  
19 section 23572. Count 1, felony child abuse (Pen. Code, § 273a(a)); and Count 3, driving with a  
20 BAC of .08 or higher (Veh. Code, § 23152(b)), were dismissed pursuant to a plea agreement.

21 b. As a result of the conviction, on or about August 30, 2011, Respondent was  
22 granted five years summary probation, and sentenced to two days in jail. Respondent was further  
23 ordered to complete a First Conviction Program, a MADD victim impact panel session, five days  
24 of public work service, and pay \$1,942 in fees, fines, and restitution, along with the terms of  
25 standard DUI probation.

26 c. The facts that led to the conviction are that on or about the afternoon of July 31,  
27 2011, a patrol officer with the California Highway Patrol (CHP) was dispatched to a traffic  
28 collision with property damage. Upon arrival, the CHP officer found Respondent standing near

1 her vehicle, which had sustained moderate front-end damage. During his contact with  
2 Respondent, he observed that there was a strong odor of an alcoholic beverage emitting from  
3 Respondent's breath and person, her eyes were red and watery, and her speech was slow and  
4 slurred. Respondent submitted to a series of field sobriety tests which she was unable to perform  
5 as explained and demonstrated. Based on the CHP's investigation, it was determined that due to  
6 Respondent's level of intoxication, she was unable to safely negotiate the left curve in the  
7 roadway, lost control of her vehicle, and sideswiped two vehicles, and finally came to a rest after  
8 colliding into the rear of a third vehicle. Respondent's nine-year-old son was sitting in the rear  
9 passenger seat at the time of the collision. Respondent provided two breath samples which were  
10 analyzed by the preliminary alcohol screening device with a BAC of .174 and .163, respectively.  
11 Respondent was arrested for driving under the influence and child endangerment.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Use of Alcohol in a Dangerous Manner)**

14 16. Respondent has subjected her registered nurse license to disciplinary action under  
15 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about July 31,  
16 2011, as described in paragraph 15, above, Respondent used alcoholic beverages to an extent or  
17 in a manner that was potentially dangerous and injurious to herself, and to others, when she drove  
18 a vehicle while under the influence, with her nine-year-old child in the back seat, and collided  
19 with three vehicles.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Conviction of Alcohol-Related Criminal Offense)**

22 17. Respondent has subjected her registered nurse license to disciplinary action under  
23 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about August  
24 30, 2011, as described in paragraph 15, above, Respondent was convicted of a criminal offense  
25 involving the consumption and/or self-administration of alcohol.

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1 **PRAYER**

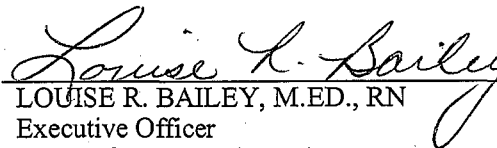
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 485688, issued to Lynda  
5 A. Havins, also known as Lynda Ann Cefail;

6 2. Ordering Lynda A. Havins to pay the Board of Registered Nursing the reasonable  
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.  
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12 DATED: September 7, 2012

  
13 LOUISE R. BAILEY, M.ED., RN  
14 Executive Officer  
15 Board of Registered Nursing  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant

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